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# Jurisdiction: Foreign Plaintiffs, Forum Non Conveniens, and Litigation Against Multinational Corporations

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JURISDICTION: FOREIGN PLAINTIFFS, FORUM NON CONVENIENS, AND LITIGATION AGAINST MULTINATIONAL CORPORATIONS—*In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December, 1984*, 634 F. Supp. 842 (S.D.N.Y. 1986), *appeal filed*, No. 86-7517 (2d Cir. June 26, 1986)

On May 12, 1986, the United States District Court for the Southern District of New York dismissed a consolidated action against Union Carbide Corporation arising from the gas plant disaster at Bhopal, India, on grounds of forum non conveniens. The case is one of a series in which United States courts have used the doctrine of forum non conveniens to deny foreign plaintiffs access to the courts in suits against United States-based corporations. Additionally, the dismissal focuses attention on the Indian legal system and its ability to deal with complex litigation.

The consolidated action[1] arose from events which occurred on the evening of December 2–3, 1984, when toxic methyl isocyanate gas escaped from a chemical plant owned and operated by Union Carbide India Limited (UCIL) in the city of Bhopal, state of Madhya Pradesh, Union of India.[2] Prevailing winds blew the gas into populated areas of the city, killing approximately 2,100 people and injuring over 200,000.[3] Union Carbide Corporation (Union Carbide), incorporated in New York, owns fifty-one percent of UCIL's stock.[4] American attorneys brought an action in the United States against Union Carbide on behalf of thousands of Indian plaintiffs on December 7, 1984.[5] After 144 additional actions were commenced,[6] the actions were joined and assigned to the United States Court for the Southern District of New York on February 6, 1985.[7]

On March 29, 1985, the Indian Parliament passed the Bhopal Gas Leak Disaster (Processing of Claims) Act (Bhopal Act), which provides that the Indian government has the exclusive right to represent Indian

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1. *In re* Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984, 634 F. Supp. 842 (S.D.N.Y. 1986), *appeal filed*, No. 86-7517 (2d Cir. June 26, 1986) [hereinafter *In re* Union Carbide]. For background information, see generally *All the World Gasped*, TIME, Dec. 17, 1984, at 20; Lang, *India's Tragedy—A Warning Heard Around the World*, U.S. NEWS & WORLD REP., Dec. 17, 1984, at 25; Whitaker, *Bhopal: Who Was to Blame?*, NEWSWEEK, Dec. 24, 1984, at 22.

2. *In re Union Carbide*, 634 F. Supp. at 844.

3. *Id.*

4. *Id.* UCIL was incorporated under Indian law in 1934. *Id.*

5. *Id. See generally* Dawani v. Union Carbide Corp., No. 84-2479 (S.D. W. Va. filed Dec. 7, 1984).

6. *In re Union Carbide*, 634 F. Supp. at 844.

7. *Id. See generally* Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984, 601 F. Supp. 1035 (J.P.M.D.L. 1985).

plaintiffs with respect to the disaster.[8] Pursuant to the Bhopal Act, the Indian government filed a complaint in the New York district court. On June 28, 1985, the individual plaintiffs consolidated their earlier complaints.[9] On July 31, 1985, Union Carbide filed a motion to dismiss the complaint on grounds of forum non conveniens.[10] The court heard oral argument on Union Carbide's motion to dismiss on January 3, 1986.

Relying on *Piper Aircraft Co. v. Reyno*,[11] the court noted that, in answering a forum non conveniens question, a district court must first determine whether or not the proposed alternate forum is adequate.[12] The court stated that it must then consider the relevant private interests of the parties and public interest factors relating to the current and alternate fora.[13] Before beginning its analysis, the court noted that the usual presumption in favor of the plaintiff's choice of forum deserved less deference here because the plaintiffs were foreign.[14]

In determining whether the Indian forum was adequate, the court stated that, in most cases, the threshold question concerning adequacy is whether the defendant is amenable to process.[15] The court held that

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8. The Bhopal Act provided in pertinent part:
> Subject to the other provisions of this Act, the Central Government shall, and shall have the exclusive right to, represent, and act in the place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person.

The Bhopal Gas Leak Disaster (Processing of Claims) Act (21 of 1985) § 3(1) (1985).

9. *In re Union Carbide*, 634 F. Supp. at 844.

10. *Id.* Additionally, in September 1985, a total of 487,000 new claims were filed in India after the Central Government of India designed a scheme for registering and processing claims. *Id.* at 844–45.

11. Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) (suit by British citizens arising from an airplane crash in Scotland against a U.S. aircraft manufacturer dismissed on grounds of forum non conveniens). *Piper* noted that a court must consider the adequacy of the alternate forum as well as the presence or absence of public and private interests. *Piper* also held that, first, an inquiry into the impact of a change in law was theoretically inconsistent with the doctrine of forum non conveniens. The general rule is that plaintiffs normally choose the forum most favorable to their case. If substantial change in the law became a factor in a dismissal on forum non conveniens grounds, the rule would become useless. Second, a substantial change factor would require the court to consider questions of choice of law and comparative law. Since the forum non conveniens doctrine was meant to help the court avoid questions of comparative law, an emphasis on the change in law would also subvert this doctrine. Third, the *Piper* court wanted to avoid further congestion of courts by foreign plaintiffs who wished to take advantage of the more liberal United States courts. *Piper*, 454 U.S. at 250–52.

12. *In re Union Carbide*, 634 F. Supp. at 845; *see also* Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947) (affirming the dismissal, on grounds of forum non conveniens, of a suit arising from a fire in Virginia brought in New York).

13. *In re Union Carbide*, 634 F. Supp. at 845 (relying on *Piper*, 454 U.S. at 256).

14. *Id.* (citing *Piper*, 454 U.S. at 256).

15. *Id.* (citing *Piper*, 454 U.S. at 254 n.22). The court also noted that the mere fact that a change in forum might be adverse to the plaintiffs was not a major factor in determining adequacy of forum, though a dismissal would not be granted where the alternate forum would provide no remedy at all. *Id.* at 846 (relying on *Piper*, 454 U.S. at 235).

because Union Carbide acknowledged and submitted to Indian jurisdiction, the threshold question of whether Union Carbide was amenable to process in India was satisfied.[16] While the court stated that Union Carbide's amenability to process should be dispositive of the question of adequacy,[17] the court responded, out of deference, to five additional issues concerning the adequacy of the Indian forum raised by the plaintiffs.

First, the plaintiffs argued that the Indian forum was inadequate because it lacked the innovation necessary to deal with litigation as complex as the Bhopal case.[18] In dismissing this argument, the court relied on the testimony of defendant's expert to show that the Indian judiciary had responded creatively in the past to complex legal problems.[19] Second, the plaintiffs argued that the Indian forum was inadequate because the Indian legal system was subject to endemic delays.[20] In dealing with this argument, the court pointed out that delays also plague United States courts and that legislation such as the Bhopal Act would provide for speedy treatment of cases in the Indian judicial system.[21] The court also noted specific instances in which the Indian Supreme Court has directed a speedy resolution of cases.[22] Third, the court rejected arguments that it was unlikely that plaintiffs would receive adequate legal representation in India by noting that Indian lawyers had previously dealt with technical and complex litigation.[23] Fourth, the court found unpersuasive plaintiffs' further contention that substantive Indian law was incapable of han-

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16. *Id.* at 847.

17. *Id.*

18. *Id.*

19. *Id.* Throughout its review of Indian law, the court relied on the affidavits of N.A. Palkhivala and J.B. Dadachanji, both of whom have practiced law in India for over 40 years. They are now both Senior Advocates before the Supreme Court of India, and Mr. Palkhivala has served as Indian Ambassador to the United States. Plaintiffs used the affidavit of Professor Marc S. Galanter of the University of Wisconsin Law School. *Id.*

20. *Id.* at 848; *see, e.g.*, L. Babu Ram v. Raghunathji, 1976 A.I.R. (S.C.) 1734 (case in litigation for 25 years); Shankar Dass v. Union of India, [1985] 2 S.C.C. 358 (action before the Supreme Court of India 11 years after appeal filed).

21. *In re Union Carbide*, 634 F. Supp. at 848. *But see* In re Air Crash Near Bombay, India on January 1, 1978, 531 F. Supp. 1175, 1181 (W.D. Wash. 1982) (district court refused to grant a dismissal on grounds of forum non conveniens because of endemic delays in Indian courts).

22. *In re Union Carbide*, 634 F. Supp. at 848.

23. *Id.* at 849. The court noted that Indian lawyers have dealt with complex technology transfers and use experts when necessary, thus enabling them to deal with the technical aspects of the Bhopal litigation. Furthermore, the court felt that governmental institutions such as the Indian Central Bureau of Investigation would be able to provide adequate investigatory services, and that the lack of large firms in India would not necessarily affect the quality of representation of the plaintiffs. Finally, the court opined that the Indian Government or the Madhya Pradesh Government, with their governmental staffs, would probably represent the plaintiffs in an Indian action, thus offering the advantages of larger firms. *Id.*

dling the complexity of the Bhopal litigation.[24] The court addressed claims that a dearth of reported case law in India demonstrated a lack of sophisticated tort law[25] by noting that the basic concepts of tort are present in India and that British case law is also available as precedent.[26]

The plaintiffs' fifth argument focused on whether Indian procedural law would prevent the litigants from receiving an adequate trial.[27] Responding to concerns that India's discovery procedures would not be as expansive as those of the United States, the court conditioned dismissal on the defendant's agreement to submit to the discovery rules of the *United States Federal Rules of Civil Procedure* should the case be brought under Indian jurisdiction.[28] The court was not persuaded

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24. *Id.* For an overview of the problems of the Indian court system, see generally Davan, *For Whom? And for What? Reflections on the Legal Aftermath of Bhopal*, 20 TEX. INT'L L.J. 295 (1985) (the poor are the victims of the Indian legal system, which suffers from endemic delays and underdeveloped tort law); Galanter, *Legal Torpor: Why So Little Has Happened in India after the Bhopal Tragedy*, 20 TEX. INT'L L.J. 273 (1985) (arguing that aspects of the Indian legal system would make it difficult for India to handle the Bhopal litigation).

25. *In re Union Carbide*, 634 F. Supp. at 849. Professor Gallanter observed that a survey of All India Reports from 1914 to 1965 found only 613 tort cases reported. Mr. Dadachanji responded that tort law is infrequently reported because cases are often settled before going to court, are not often appealed, and are reported in specialized journals. He also noted that the tort law has been codified in a number of Indian statutes. *Id.*

26. *Id.* The court added that, while filing fees may have inhibited the development of tort law by reducing the number of claims filed, that fact was irrelevant because court fees had been waived for the Bhopal litigants. *Id.*

27. *Id.* at 850. The court pointed out that despite the lack of specific provisions for impleader of third parties for contribution in the *India Code of Civil Procedure*, other rules in the code could be construed to mitigate against such a lack. *Id.* In addition, India's lack of procedures and mechanisms for judicial management of complex litigation was not found relevant because, having failed to reach a settlement in the United States, judicial management would be unlikely to succeed in India. *Id.* at 851. Finally, the court found the absence of class actions in India did not make the forum inadequate, because the Indian legislature could amend the law concerning representative suits. *Id.* The court stressed that the *India Code of Civil Procedure* permits courts to add additional parties if necessary to adjudicate all the issues of a suit. *Id.* at 851. The court accepted defendant's assertion that parties can be added to prevent repetitive suits and noted instances when the Indian courts had consolidated actions. *Id.*; *see, e.g.*, Gupta v. Asiatic Co., 1960 A.I.R. (Allahabad) 184 (courts can direct consolidation in the interests of justice when the matter at issue is substantially the same); Harinarain v. Ram Asish, 1957 A.I.R. (Patna) 124 (inherent power is granted by the *India Code of Civil Procedure* to consolidate suits even without the consent of the parties).

28. *In re Union Carbide*, 634 F. Supp. at 850. The court stated that under the doctrine of forum non conveniens a federal court has the power to condition transfer on a defendant corporation's agreement to provide evidence required for a fair adjudication. *Id.* at 850 n.7. *See* Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257 n.25 (1981). The court thought that it was fair to bind the plaintiffs to United States discovery rules but that it lacked the authority to do so. *In re Union Carbide*, 634 F. Supp. at 850 n.7. In Boskoff v. Transportes Aereos Portugeses, 17 Avi. Cas. (CCH) 18,613, 18,615 (N.D. Ill. 1983), a district court conditioned dismissal of a suit arising from an aircraft crash in Portugal, on the consent of all defendants to submit to discovery under the *Federal Rules of Civil Procedure*. In Nai-Chao v. Boeing Co., 555 F. Supp. 9, 11 (N.D. Cal. 1982), *aff'd sub nom.*, Cheng v. Boeing Co., 708 F.2d 1406 (9th Cir.), *cert. denied*, 104 S. Ct. 549 (1983), a suit arising out of a plane crash in Taiwan, the district court agreed to dismiss on grounds of forum non conveniens subject to the following conditions:

by plaintiffs' argument that the unavailability of juries or contingency fees made the Indian forum inadequate because both features are absent in many civil law jurisdictions and in the United Kingdom.[29] Additionally, in order to avoid the possibility that a foreign judgment would be unenforceable by courts of either the United States or India, the court further conditioned the dismissal on Union Carbide's consent to be bound by an Indian judgment and consent to satisfy any judgment given by the court and affirmed on appeal.[30]

Having determined that the Indian courts provided an adequate forum and having dealt with the plaintiffs' arguments concerning adequacy, the court proceeded to find that the private interests of the individual litigants also indicated that the action should be heard in India.[31] The first private interest factor the court considered was the ease of access to sources of proof. The court agreed with Union Carbide that almost all evidence bearing on liability was in India.[32] The Bhopal plant had been run by Indians employed by UCIL;[33] almost all documentary evidence with respect to plant design, training of personnel, and safety procedures was located in India, while very little relevant data was in the United States.[34] Furthermore, the court indicated that, because some documents were written in Hindi and other Indian languages, an Indian court would be better able to review the evidence.[35]

A second important private interest factor that the court considered was the availability of compulsory process for unwilling witnesses and

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(1) the foreign court would exercise its jurisdiction over the claims; (2) defendants submit to personal jurisdiction and make employees available for testimony; (3) defendants waive any statutes of limitations defenses; and (4) defendants consent to satisfy any judgment rendered in the foreign court. In Fitzgerald v. Texaco, Inc., 521 F.2d 448, 449 (2d Cir. 1975), *cert denied*, 96 S. Ct. 781 (1976) an action was dismissed subject to defendant's agreement to satisfy certain conditions.

29. *In re Union Carbide*, 634 F. Supp. at 851. The court stated that the complaints already filed in India indicated the absence of contingency fees would not be a barrier to plaintiffs. In addition, the court noted that prominent Indian lawyers were waiving their fees, thus mitigating the absence of contingency fees. *Id.*

30. *Id.* at 851–52.

31. *Id.* at 852 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)). The court emphasized that private interest concerns, as well as public interest factors derived in previous decisions, were not meant to be rigidly applied. *Id.*; *see Piper*, 454 U.S. at 249–50.

32. *In re Union Carbide*, 634 F. Supp. at 853–58. The district court conducted limited discovery on the forum non conveniens issue pursuant to the court's order of August 14, 1985, which allowed it to rule on the existence and location of relevant evidence. *Id.*

33. *Id.* at 853.

34. *Id.* at 858.

35. *Id.* In regard to evidence for damages, the court remarked that while it was true that all the victims and their medical records were in India, the sheer number of victims alone was not dispositive in a forum non conveniens motion. The court wanted to avoid creating a doctrine by which the greater the number of people injured, the less likely a suit in this country would be. *Id.* at 858 n.20.

the costs of transporting witnesses.[36] The court concluded that an Indian forum would allow for greater access to witnesses, avoid translation problems, and avoid high transportation costs in bringing witnesses to the United States.[37] The court added that the opportunity to view the plant and the surrounding area made the Indian forum attractive.[38]

Next, the court examined three public interest factors involved in the litigation. First, the court considered the issue of judicial administration. The court pointed out that it was already overburdened with a full docket and that bearing the administrative burdens of the Bhopal litigation was unjustified, since another adequate forum existed and almost all events relevant to the accident had occurred in India.[39] The court could not require American citizens to bear the costs of jury service and court expenses when they had little connection to the subject matter of the case.[40]

Second, the court considered the relative interests of India and the United States in hearing the case and held that Indian public interest outweighed any United States interest in adjudicating the matter.[41]

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36. *Id.* at 859 (relying on *Gulf Oil*, 330 U.S. at 508).

37. *Id.* at 859–60. The court noted that almost all witnesses were Indian nationals, and any United States citizens were likely to be Union Carbide employees who were subject to compulsory process. *Id.*; *see also Gulf Oil*, 330 U.S. at 511; *Piper*, 454 U.S. at 258; Fitzgerald v. Texaco, Inc., 521 F.2d 448, 451–52 (2d Cir. 1975) (fact that the district court could not subpoena foreign witnesses who were not parties to the action was a relevant factor in granting a dismissal on grounds of forum non conveniens); Schertenleib v. Traum, 589 F.2d 1156, 1165 (2d Cir. 1978); Nai-Chao v. Boeing Co., 555 F. Supp. 9, 18 (N.D. Cal. 1982) (lack of compulsory process to subpoena a witness is relevant factor in dismissing a case on grounds of forum non conveniens); Texaco Trinidad, Inc. v. Astro Exito Navegacion S.A., 437 F. Supp. 331, 333 (S.D.N.Y. 1977). Furthermore, the court believed that potential witnesses and defendants from state and local levels would not be subject to process by United States courts, while this would not be a problem in India. The court noted that as witnesses Indian state employees were beyond its subpoena power, while as third party defendants they might be immune from suit due to foreign sovereign immunity. *In re Union Carbide*, 634 F. Supp. at 859.

38. *In re Union Carbide*, 634 F. Supp. at 860.

39. *Id.* at 861 (relying on Domino v. States Marine Lines, 340 F. Supp. 811, 816 (S.D.N.Y. 1972)); *see also Gulf Oil*, 330 U.S. 508–9; Pain v. United Technologies Corp., 637 F.2d 775, 792 (D.C. Cir. 1980) (suit arising from a helicopter crash was correctly dismissed because virtually all relevant events occurred in Norway); *Schertenlieb*, 589 F. 2d at 1163.

40. *In re Union Carbide*, 634 F. Supp. at 862; *see also Pain*, 637 F.2d at 784–85 (even when plaintiff's and defendant's private interests are equally weighted, a court may dismiss an action on grounds of forum non conveniens when retention of jurisdiction would be unduly burdensome to the community); Islamic Republic of Iran v. Pahlavi, 62 N.Y.2d 474, 467 N.E.2d 245 (1984), *cert. denied*, 105 S. Ct. 783 (1985) (dismissal of claims by Iran against the former Shah of Iran was affirmed inter alia on grounds that retention of jurisdiction would be burdensome to New York courts).

41. *In re Union Carbide*, 634 F. Supp. at 863. Amicus curiae, the Christic Institute, argued first that American corporations should assume responsibility for accidents which take place on foreign soil. Second, adjudication of the case in a United States forum would contribute to international cooperation and would avoid the creation of a "double standard" for United States multinational corporations which imposes strict safety standards for industrial activity in the United States while allowing for more lax standards in other countries. *Id.* at 862. Finally,

The court opined that because the Indian Government had been active in regulating the construction and operation of the Bhopal plant,[42] the Indian people had a deep interest in deciding whether or not these regulations were adequate.[43] The court explained that every government must decide for itself which industries to allow and what safety measures to impose on them; such decisons are a product of every country's values and concerns.[44]

Lastly, the court noted that the need of an American court to apply foreign law was an appropriate public interest factor to consider when passing on a motion to dismiss for forum non conveniens.[45] The court held that because Indian law would probably apply, an Indian court was better suited to hear the case.[46] As a federal court hearing a consolidated action, the court stated that it would have to apply the choice-of-law rules of the states in which the actions were originally brought.[47] Examining the choice-of-law doctrine as a whole, the court found that choice-of-law tests such as governmental interests, location of the occurrence of the tort, and weight of contacts all pointed to the probability that Indian law would apply and made it more appropriate for an Indian court to handle the litigation.[48]

The dismissal is one of a series of cases in which United States courts have used the traditional doctrine of forum non conveniens to dismiss actions brought by foreign plaintiffs against United States-based corporations.[49] The near equation of amenability to process with

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plaintiffs claimed that the United States had an interest in deterring accidents within the United States itself. *Id.*

42. *Id.* at 863.

43. *Id.* at 864; *see also* Harrison v. Wyeth Laboratories, 510 F. Supp. 1, 4 (E.D. Pa. 1980), *aff'd mem.*, 676 F.2d 685 (3d Cir. 1982) (suit against IUD manufacturer dismissed on forum non conveniens grounds where Great Britain regulated the distribution of contraceptives); *In re* Richardson-Merrell, Inc., 545 F. Supp. 1130, 1135 (S.D. Ohio 1982), *modified sub. nom.*, Dowling v. Richardson-Merrell, Inc., 727 F.2d 608 (6th Cir. 1984) (suit against company which had developed and tested a drug in the United States was dismissed on grounds of forum non conveniens because the product was manufactured, regulated, and marketed in Great Britain).

44. *In re Union Carbide*, 634 F. Supp. at 864–65. Dramatically, the court stated "[i]t would be sadly paternalistic, if not misguided, of this Court to evaluate the regulations and standards imposed in a foreign country. This litigation offers a developing nation the opportunity to vindicate the suffering of its own people within the framework of a legitimate legal system." *Id.*

45. *Id.* at 866.

46. *Id.*; *see* Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 509 (1947); Piper Aircraft Co. v. Reyno, 454 U.S. 235, 251 (1981); Pain v. United Technologies Corp., 637 F.2d 775, 792 (D.C. Cir. 1980). *But see In re* Disaster at Riyadh Airport, Saudi Arabia, on Aug. 19, 1980, 540 F. Supp. 1141, 1153 (D.D.C. 1982) (possibility that foreign law might apply was not a significant factor in determining appropriate forum).

47. *In re Union Carbide*, 634 F. Supp. at 866.

48. *Id.* at 847.

49. *See, e.g., Piper*, 454 U.S. at 235; *Pain*, 637 F.2d at 775; *In re* Disaster at Riyadh Airport, Saudi Arabia, on Aug. 19, 1980, 540 F. Supp. at 1141.

adequacy of fora makes it difficult for a foreign plaintiff to bring an action in a United States court.[50] Consequently, while affirming basic notions of efficiency and convenience, the application of the doctrine to complex litigation involving multinational organizations raises the possibility that the doctrine may now be used as a defensive strategy instead of a means for maximizing the convenience of the parties.[51] A change in forum gives defendants the benefits of delay and the prospect of smaller awards in foreign courts.[52]

Conditioning the dismissal on the defendant's submission to the discovery rules of the *Federal Rules of Civil Procedure* may be seen as an effort to recognize the unique accountability problems raised when corporations operate in a number of jurisdictions.[53] But the conditional dismissal is not without its problems. One of the issues currently on appeal is whether a district court can condition a dismissal on grounds of forum non conveniens upon defendant's consent to submit to the *United States Federal Rules of Civil Procedure* while plaintiffs are not similarly bound.[54] Furthermore, the condition of submission to United States discovery rules raises questions about whether the United States District Court or the Indian court will hear discovery motions.[55]

In addition to raising questions about the accountability of United States multinational corporations and about some procedural difficulties, the decision focuses attention on the Indian legal system's ability to handle litigation stemming from one of the worst industrial accidents in history.[56] The decision is a signal to India and other countries that they will be required to bear the administrative and judicial burdens of regulating and monitoring the industries which they allow to exist within their borders, even though foreign entities may have a controlling interest in those industries.[57]

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50. *In re Union Carbide*, 634 F. Supp. at 847.

51. Note, *Forum Non Conveniens and Foreign Plaintiffs in the Federal Courts*, 69 GEO. L.J. 1257, 1258 (1981).

52. *Id.*

53. As Chief Judge Oakes of the Second Circuit noted, "The whole [forum non conveniens] doctrine might also be reexamined in the light of the dispersion of corporate authority . . . by the use of multinational subsidiaries to conduct international business." Fitzgerald v. Texaco, Inc., 521 F.2d 448, 456 (2d Cir. 1975) (Oakes, C.J., dissenting).

54. Brief of Appellee and Cross-Appellant Union Carbide Corp. at 1, *In re Union Carbide*, 634 F. Supp. 842 (S.D.N.Y. 1986), *appeal docketed*, No. 86-7517 (2d Cir. June 26, 1986).

55. Brief for Appellants at 17, *In re Union Carbide*, 634 F. Supp. 842 (S.D.N.Y. 1986), *appeal docketed*, No. 86-7517 (2d Cir. June 26, 1986).

56. *See* Note, *International Mass Tort Litigation: Forum Non Conveniens and the Adequate Alternative Forum in Light of the Bhopal Disaster*, 16 GA. J. INT'L & COMP. L. 109 (1986) (arguing that Indian courts should hear the Bhopal litigation).

57. *See* McGarity, *Bhopal and the Export of Hazardous Technologies*, 20 TEX. INT'L L.J. 333 (1985) (describing three possible means of monitoring companies which export hazardous technologies to other countries).